

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

CHAPTER 11

Keith Gorman,

Debtor.

Case No. 22-10563-BAH

Benson Lumber & Hardware, Inc.,

Plaintiff,

v.

Adv. Pro. No. 23-01003-BAH

Keith Gorman,

Defendant,

Keith Gorman,

Third-Party Plaintiff,

v.

Michael J. Fadden, Esq. and
Michael J. Fadden, P.C.,

Third-Party Defendants.

**PLAINTIFF'S FIRST MOTION FOR ORDER
GRANTING LEAVE TO AMEND ANSWER TO COMPLAINT**

The Defendant and Counterclaim Plaintiff, **Keith M. Gorman** ("Mr. Gorman" or the "Defendant") respectfully moves this Court as follows:

INTRODUCTION

1. Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Mr. Gorman requests permission or leave to amend the original Answer, Affirmative Defenses and Counterclaims (the "Answer") against the Plaintiff, Benson Lumber & Hardware, Inc. ("Benson Lumber") by way of objection and in response to the "(I) Response to Claim Objection and (II) Motion to Dismiss

Defendant's Statement of Counterclaims" filed by Benson Lumber (the "Motion to Dismiss"). *Docs. 12 and 27.* Attached hereto as Exhibit A is a copy of the First Amended Answer, Affirmative Defenses and Counterclaims proposed by the Defendant, which is incorporated herein by reference as fully as if set forth at length (the "Amended Answer"). Accompanying this motion is a proposed Order granting Mr. Gorman the relief requested in this motion.

PROCEDURAL HISTORY OF ADVERSARY PROCEEDING

2. Benson Lumber commenced this adversary proceeding against Mr. Gorman by filing its Complaint against him on or about March 3, 2023 (the "Original Complaint"). *Doc. 1.*

3. On or about May 5, 2023, the Defendant filed his Answer, Affirmative Defenses and Counterclaims.

4. The Plaintiff filed its Motion to Dismiss on June 16, 2023.

5. The twenty-first (21st) day from June 16, 2023 is not earlier than July 7, 2023.

BASIS FOR REQUEST RELIEF

6. Rule 7015 of the Federal Rules of Bankruptcy Procedure, which incorporates Rule 15 of the Federal Rules of Civil Procedure, governs the amendment of the Complaint filed by the Plaintiff to commence this adversary proceeding ("Rule 15," the "FRBP" and "FRCP" and the "Original Complaint").

7. Rule 15(a)(1) reads in pertinent part as follows:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

....

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(Emphases added).

8. Mr. Gorman has filed his First Amended Answer, Affirmative Defenses And Counterclaims Against Plaintiff attached hereto as Exhibit A with this Court pursuant to Rule 15(a)(1).

9. This Motion is being filed out of an abundance of caution and to advise this Court of the First Amended Answer.

10. Even if leave of court is necessary, it should be granted in this case. Leave "shall be freely given when justice so requires." *Rule 15* and *Moore's Federal Rules Pamphlet*, §15.5[2], at 178 (2002). Absent proof of "sufficient reasons for denying leave to amend – undue delay, bad faith, or dilatory motive," this Court should permit the Plaintiff to amend the Complaint to address the alleged issues asserted by Benson Lumber. As shown by the Docket, this court has not yet held the preliminary pretrial conference and discovery has not begun. Absent proof of "sufficient reasons for denying leave to amend – undue delay, bad faith, or dilatory motive", this Court should permit the Plaintiff to amend the Complaint. *Moore's Federal Rules Pamphlet*, § 15.5[2], at 178 (2002) ("Moore's").

SUMMARY OF PROPOSED AMENDMENTS.

11. The First Amended Answer is significantly more detailed than the original in terms of the Counterclaims.

12. Nevertheless, Counsel will provide this Court and opposing counsel with a red-lined version of the proposed Amended Complaint and discuss with opposing counsel how best to address the pending Motion to Dismiss in light of the First Amended Complaint.

Respectfully submitted,

DATED: July 7, 2023

/s/ William S. Gannon
William S. Gannon, BNH01222

Attorney for:

KEITH GORMAN, Debtor and Debtor in
Possession

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing notice on all persons and entities named on the CM/ECF Electronic Service List by causing it to be filed electronically via the CM/ECF filing system.

DATED: July 7, 2023

/s/ Jeanne Arquette-Koehler
Jeanne Arquette